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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EXPRESS, LLC,

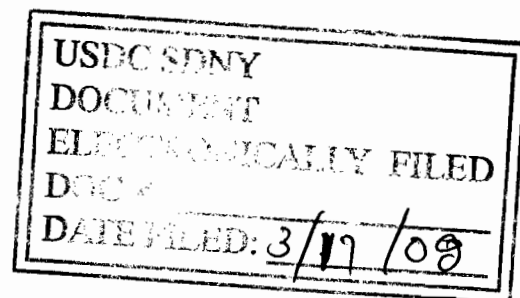
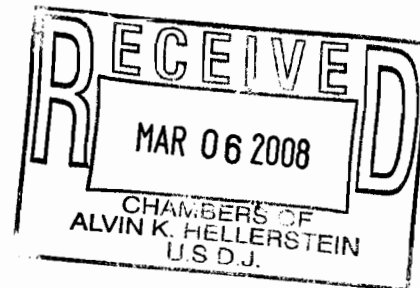
Plaintiff,

v.

CLOTHING FOR MODERN TIMES LTD.
D/B/A URBAN BEHAVIOR and
CMT AMERICA CORP.,

Defendants.

07-CV-11410 (AKH)



**FINAL JUDGMENT AND
INJUNCTION ON CONSENT**

This civil action having come before the Court on the joint application of plaintiff, EXPRESS, LLC ("Express" or "plaintiff"), and defendants, CLOTHING FOR MODERN TIMES LTD. D/B/A URBAN BEHAVIOR ("Urban Behavior") and CMT AMERICA CORP. ("CMT America"), collectively, "CMT" or "defendants", through their respective attorneys, and the Court being advised that the parties have compromised their differences and have agreed to the termination of this civil action in accordance with the following stipulated findings and conclusions and the entry of this Final Judgment and Injunction on Consent;

NOW, THEREFORE, upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction over the subject matter and the named parties herein, and venue of this action is proper in this District.
2. Express represents that it created and developed various graphics for use on clothing, which contain material wholly original to Express and constitute copyrightable subject

matter under the Copyright Law of the United States (the "Express Graphics"). Express has secured the exclusive rights and privileges in and to the copyrights of said Express Graphics and received from the Register of Copyrights the following certificates of registration in accordance with the Copyright Revision Act of 1976, Title 17, United States Code:

<u>Copyright Title</u>	<u>Registration No.</u>	<u>Date of Registration</u>
Pyrate Radio	VA 1-623-649	December 6, 2007
Triangle Beneath Canal	VA 1-623-560	December 6, 2007
Fleur De Lion	VA 1-623-556	December 6, 2007
Crown Skull	VA 1-623-557	December 6, 2007
Night Passes	VA 1-623-555	December 6, 2007
After Forever	VA 1-623-645	December 6, 2007
Twin Lion Loyalty	VA 1-623-559	December 6, 2007
Norvus Ordo	VA 1-623-646	December 6, 2007
Metropol	VA 1-623-558	December 6, 2007
Spoils – Methods	VA 1-623-648	December 6, 2007
Honor Skull	VA 1-624-885	December 19, 2007
Sound Skull	VA 1-624-886	December 17, 2007

Express is the sole owner of all right, title and interest in and to the copyrights in the foregoing registrations, and defendants do not dispute their validity.

3. Express is the owner of U.S. Trademark Registration No. 3,090,209 of the GRIFFIN Design trademark (the "GRIFFIN Design Mark") for clothing in International Class 25 and which is used on and in connection with the sale of numerous apparel products, including the

above copyrighted designs entitled Fleur de Lion, Twin Lion Loyalty, Novus Ordo and Spoils Methods.

4. Defendant Urban Behavior owns and/or operates retail stores in Canada that offer for sale and sell clothing and accessories for men and women and is the corporate parent of defendant CMT America.

5. Defendant CMT America owns and/or operates retail stores in the United States that offer for sale and sell clothing and accessories for men and women under the name Urban Behavior.

6. On December 19, 2007, Express filed the above captioned civil action (the "Civil Action") against defendants alleging claims for copyright infringement, federal trademark infringement and unfair competition along with claims alleging violation of Section 360-I of the New York General Business Law and common law claims of trademark infringement and unfair competition under New York law based on defendants' alleged importation, distribution and sale in the United States of apparel bearing designs substantially similar to Express' copyrighted designs and GRIFFIN Design Mark (the "Urban Behavior Shirts").

7. Though defendants have not answered the complaint and do not admit liability for the claims alleged therein, the parties seek to amicably resolve the Civil Action. Therefore, as a full and final accord and satisfaction of defendants from any and all liabilities, disputes, claims, and matters known solely regarding the above Civil Action, defendants shall pay to Express the sum of twenty-two thousand fifteen dollars and seventy-three cents (\$22,015.73) in U.S. funds by check payable to Colucci & Umans contemporaneous with defendants' execution hereof.

8. Defendants, their officers, agents, servants, employees, representatives, successors or assigns, and any and all persons who are in active concert or participation or

otherwise in privity with any of them, hereby agree to be permanently enjoined and restrained from the following activities in the United States:

- a. Buying, selling, manufacturing directly or indirectly, distributing, offering for sale, advertising, promoting or using in the future any product that features, uses or refers to any protectable design or copyright of Express, including but not limited to the Express Graphics or any design or copyright that is substantially similar to any protectable design or copyright of Express or its affiliates, without the specific written authorization of Express;
- b. Buying, selling, manufacturing directly or indirectly, distributing, offering for sale, advertising, promoting or using in the future any merchandise that is not the product of Express and that features, uses or refers to any trademark, service mark, trade dress or other intellectual property right of Express, including but not limited to the GRIFFIN Design Mark or any mark that is confusingly similar to any trademark, trade dress or other intellectual property right of Express or its affiliates, and is likely to create the erroneous belief or impression that defendant's merchandise originates from Express, or is licensed, authorized, endorsed or sponsored by Express, or is connected or associated in some way with Express;
- c. Doing in the future any other act or thing likely to cause others to believe that the defendants, or the goods they advertise or offer for sale, are in any way affiliated, connected, or associated with Express, without the specific written authorization of Express.

9. Defendants hereby represent and warrant:

- a. They have discontinued all use, sale and distribution in the United States of the Urban Behavior Shirts, Express Graphics and GRIFFIN Design Mark on or in connection with any and all products or services, as depicted in Exhibit A hereto;
- b. Other than the styles shown in Exhibit A, defendants have not manufactured, sold or otherwise used anywhere in the world any other Express designs, graphics or styles;
- c. Defendants' aggregate remaining inventory of products bearing the Express Graphics or GRIFFIN Design Mark, or any substantially similar designs or marks, that were distributed or intended for distribution in the United States is 3,161 units, including all merchandise returned from defendants' retail stores, which defendants shall ship to the distribution center of Express, in accordance with instructions to be provided and at defendants' sole cost, within thirty days hereof, and with title to be transferred to Express upon delivery thereof;
- d. Defendants will not manufacture, cause to be manufactured, offer for sale, sell or distribute any products or services in connection with the Express Graphics or GRIFFIN Design Mark or any substantially similar designs or marks.
- e. Defendants have provided to Express' representatives all relevant documents related to all allegations in the Civil Action and have disclosed

all relevant facts, without withholding any information that would be of interest to Express;

- f. The financial documentation defendants provided regarding its sales of the Urban Behavior Shirts is accurate and complete and is a material factor in Express agreeing to the foregoing terms; and
- g. Defendants have disclosed to Express' representatives all of the information in defendants' possession, notwithstanding its form, concerning the identity of any companies and or individuals from which defendants obtained any and all merchandise bearing any designs or trademarks of the Express or its affiliates.

10. Defendants release Express from any and all claims they asserted or could have asserted arising out of the subject matter of this action.

11. Each of the parties hereto shall bear its own costs and attorneys' fees incurred in this action.

12. This Final Judgment and Injunction on Consent shall be binding upon the parties, their heirs, successors and assigns.

13. Jurisdiction is retained by this Court for the purpose of enabling the parties to apply to this Court at any time for such further orders or direction as may be necessary for the interpretation or implementation hereof, compliance herewith, or the punishment of violations hereof with respect to the Urban Behavior Shirts.

14. This Final Judgment and Injunction on Consent shall apply solely to the activities of defendants in the United States and is not intended to reach conduct by defendants outside the jurisdiction of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event of a future violation of Express' intellectual property rights, whether affecting copyright, trademark, trade dress or otherwise, resulting in a court of competent jurisdiction granting injunctive, monetary or other relief to Express as the prevailing party, then Express shall recover from defendants its reasonable attorneys fees incurred in bringing such a successful claim in addition to any other relief granted by the court; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Final Judgment and Injunction on Consent, along with defendants' payment to Express in paragraph 7 above, is in full settlement of all claims and defenses, whether known or unknown which the parties had or could have had against each other from the beginning of the world until the date of this Order, including, but not limited to, those claims and defenses that were or could have been raised in this Civil Action; however, nothing in this Final Consent Judgment waives:

- (a) Express' right to enforce the terms of this Final Consent Judgment;
- (b) Express' affirmative rights under federal and/or common law including, but not limited to, inter alia, a motion for civil contempt, monetary sanctions, reasonable attorneys' fees and costs, lost profits, treble damages, and/or punitive damages should such an action or motion be warranted by defendants' future conduct which is not the subject of either Express' Complaint herein or this Final Judgment and Injunction on Consent;
- (c) Defendants' right to raise any defense to any future claims raised by Express that are not the subject of either Express' Complaint herein or this Final Judgment and Injunction on Consent; and

(d) Express' right to pursue claims against defendants for violations beyond the jurisdiction of this Court, including those that arise, have arisen or may arise outside the United States.

Entry of the foregoing Final Judgment and injunction is hereby consented to:

APPROVED AS TO FORM:

Dated: February 28, 2008

COLUCCI & UMANS

By: Frank J. Colucci
Frank J. Colucci (FC-8441)
Richard P. Jacobson (RJ-2843)
218 East 50th Street
New York, New York 10022
Telephone: (212) 935-5700
Facsimile: (212) 935-5728
Email: email@colucci-umans.com

Attorneys for Plaintiff

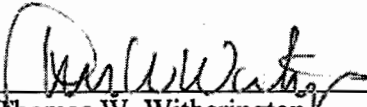
EXPRESS, LLC

By: Matt Moeller
Name: Matt Moeller
Title: CEO
Dated: February 28, 2008

APPROVED AS TO FORM:


Dated: February 28, 2008

COHN BIRNBAUM & SHEA, P.C.

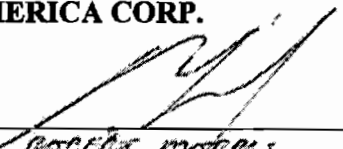
By: 
Thomas W. Witherington
Cohn Birnbaum & Shea, P.C.
100 Pearl Street
Hartford, CT 06103-4500
Telephone (860) 493-2200
Facsimile: (860) 727-0361
Email: twitherington@cb-shea.com

Attorneys for Defendants

**CLOTHING FOR MODERN TIMES LTD.
D/B/A URBAN BEHAVIOR**

By: 
Name: BRYAN J. TINKHAM
Title: CFO
Dated: February 29, 2008

CMT AMERICA CORP.

By: 
Name: ROBERT M. MATUS
Title: CFO
Dated: February 29, 2008

*The Clerk shall close the case subject
to being re-opened for the reasons specified herein.
AKH*

SO ORDERED this 17 day of March, 2008.

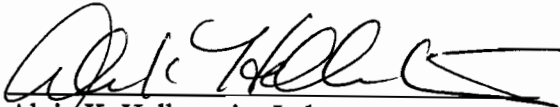



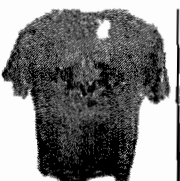












Alvin K. Hellerstein, Judge
United States District Court
Southern District of New York

EXHIBIT A

Style #	Image
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GND2293 GDA2293BW	
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GDA2292BW GDA2292	
GDALSW2W	
GDA2203B GDA2203W	
GDA2207B GDA2207W	
GDA2208W	
GDA2210W	
GDA2215W	

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

Date:

In Re:

-v-

Case #:

()

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. No personal checks are accepted.

J. Michael McMahon, Clerk of Court

by: _____

, Deputy Clerk

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

-----X
-V-
-----X

NOTICE OF APPEAL

civ. ()

Notice is hereby given that _____
(party)
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the _____ day of _____, _____
(day) (month) (year)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

-V-

**MOTION FOR EXTENSION OF TIME
TO FILE A NOTICE OF APPEAL**

civ. ()

Pursuant to Fed. R. App. P. 4(a)(5), _____ respectfully
(party)
requests leave to file the within notice of appeal out of time. _____
(party)
desires to appeal the judgment in this action entered on _____ but failed to file a
(day)
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

FORM 2

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

-V-

**NOTICE OF APPEAL
AND
MOTION FOR EXTENSION OF TIME**

civ. ()

1. Notice is hereby given that _____ hereby appeals to
(party)
the United States Court of Appeals for the Second Circuit from the judgment entered on _____.
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time

(party)
respectfully requests the court to grant an extension of time in
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, _____ states that
(party)
this Court's judgment was received on _____ and that this form was mailed to the
(date)
court on _____
(date)

(Signature)_____
(Address)_____
(City, State and Zip Code)

Date: _____

() _____
(Telephone Number)

Note: You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

FORM 3

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

-----X
-V-
-----X

AFFIRMATION OF SERVICE

civ. ()

I, _____, declare under penalty of perjury that I have
served a copy of the attached _____

upon _____

whose address is: _____

Date: _____
New York, New York

(Signature)

(Address)

(City, State and Zip Code)

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006